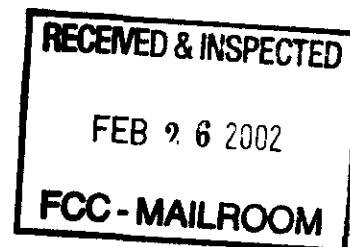


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Ursuline Academy)
New Orleans, Louisiana)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-178448

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: February 20, 2002

Released: February 21, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Ursuline Academy (Ursuline), New Orleans, Louisiana.¹ Ursuline seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of its Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that to obtain discounts, an applicant make a bona fide request

¹ Letter from Sr. Elizabeth S. Hatzenbuehler, to Federal Communications Commission, filed May 4, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In each funding request on an applicant's FCC Form 471, the applicant must specify the service provider that will be delivering the discounted service by name and Service Provider Information Number (SPIN).⁷ Where a party seeks service pursuant to a state master contract (a contract competitively bid and put in place by an entity of state government for use by others) and that master contract expires prior to the end of the service year, the party may, under some circumstances, obtain discounts on the service through the rest of the funding year, but must follow the "state replacement contract" procedure provided by SLD on its website.⁸ Applicants filling out an FRN pursuant to this procedure use a special SPIN, 143999999.⁹

4. In Funding Request Number (FRN) 361272, Ursuline Academy requested discounted Internet Access, listing as its service provider, "State Replacement Contract," SPIN 143999999.¹⁰ On May 19, 2000, SLD denied FRN 361272 on the grounds that "[t]he cited SPIN is only for a state master contract, but [the] applicant is not authorized to purchase from this contract."¹¹ Ursuline Academy appealed to SLD, asserting that it had been instructed by the Archdiocese to use SPIN 143999999, but that the correct SPIN was 143004824, the SPIN for

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 20.

⁸ See SLD website, <<http://www.sl.universalservice.org/reference/StateReplacement.asp>>.

⁹ *Id.*

¹⁰ FCC Form 471, Ursuline Academy, filed January 14, 2000.

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sr. Elizabeth S. Hatzenbuehler, Ursuline Academy, dated May 19, 2000, at 6.

BellSouth.¹² Ursuline Academy requested that it be permitted to correct FRN 361272 to reflect SPIN 143004824.¹³

5. On April 10, 2001, SLD denied the appeal.¹⁴ It stated that the original FCC Form 471 used the State Replacement Contract SPIN 143999999.¹⁵ SLD found that the service requested by Ursuline Academy was not pursuant to a state master contract, and that Ursuline Academy was therefore prohibited from using the State Replacement Contract SPIN.¹⁶ SLD concluded that Ursuline Academy's request was properly denied for listing a SPIN that it was not authorized to use.¹⁷ Following the denial of its appeal, Ursuline Academy filed the pending Request for Review, again requesting that the SPIN associated with FRN 361272 be changed to BellSouth, SPIN 143004824.¹⁸

6. After reviewing the record, we find that Ursuline Academy's Request for Review must be denied because it is not entitled to a SPIN correction under the facts presented here. As a general matter, applicants may request and obtain SPIN corrections both before and after the issuance of the Funding Commitment Decision Letter.¹⁹ However, an applicant may not seek a SPIN correction or SPIN change after the SPIN that it entered on its funding request has led to a funding denial.²⁰ If applicants were permitted to correct or modify their applications after SLD has denied them, it would eliminate any incentive for them to ensure that they were providing complete and accurate information in the FCC Forms 471. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.

7. Ursuline Academy does not dispute SLD's determination that its use of SPIN 143999999 was erroneous because it was not seeking service under a state master contract. Further, the record demonstrates that Ursuline was seeking service under a master contract

¹² Letter from Sr. Elizabeth S. Hatzenbuehler, Ursuline Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed June 12, 2000, at 1.

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sr. Elizabeth S. Hatzenbuehler, Ursuline Academy, dated April 10, 2001 (Administrator's Decision on Appeal).

¹⁵ *Id.* at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Request for Review, at 1.

¹⁹ See SLD website, <<http://www.sl.universalservice.org/reference/SPINCorrection.asp>>.

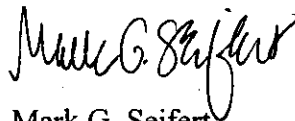
²⁰ *Request for Review by Flagler County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-180015, CC Dockets No. 96-45 and 97-21, Order, DA 02-282 (Com. Car. Bur. rel. February 6, 2002). See also Administrator's Decision on Appeal, at 2 (stating, in response to appeal from funding denial, that "SLD will not grant a SPIN Change, since your original request included a SPIN that you were not authorized to use.").

negotiated by the Archdiocese of New Orleans, not one negotiated by the State of New Orleans.²¹ Thus, FRN 361272 was correctly denied because of an invalid use of SPIN 143999999. Because the SPIN of FRN 361272 led to a funding denial, we conclude that Ursuline Academy was not thereafter entitled to a SPIN correction.

8. Ursuline Academy argues that it used the state replacement contract SPIN pursuant to instructions from the Archdiocese of New Orleans that, it alleges, the Archdiocese of New Orleans in turn received from SLD personnel.²² However, where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee.²³ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures, including the procedures governing the use of the state replacement contract SPIN.²⁴ Therefore, we decline to grant relief on the grounds that Ursuline Academy received incorrect information from SLD.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Ursuline Academy, New Orleans, Louisiana, on May 4, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

²¹ See Universal Service Administrative Company, Schools and Libraries Division, Schools and Libraries 471 Program Integrity Assurance Review, Ursuline Academy, dated February 10, 2000 (noting that there is an Archdiocese master contract bid on the FCC Form 470, which was accepted by Ursuline).

²² Request for Review, at 1.

²³ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

²⁴ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").